

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013050430
v.	
SANTA CRUZ CITY SCHOOL DISTRICT AND LIVE OAK ELEMENTARY SCHOOL DISTRICT,	
LIVE OAK ELEMENTARY SCHOOL DISTRICT,	OAH CASE NO. 2013050156
v.	
PARENT ON BEHALF OF STUDENT.	ORDER DENYING MOTION TO AMEND COMPLAINT

On May 3, 2013, Live Oak Elementary School District (Live Oak) filed a Request for Due Process Hearing in Office of Administrative Hearings (OAH) case number 2013050156 (First Case) naming Student.

On May 14, 2013, Student filed a Due Process Hearing Request (complaint) OAH Case number 2013050430, naming Santa Cruz City School District.

On June 3, 2013, Student filed a Motion to Amend the Due Process Hearing Request (first amended complaint) to add Live Oak as a party.

On June 12, 2013, OAH granted Student's motion to amend his Request for Due Process Hearing in OAH case number 2013050430 (Second Case), naming Live Oak and Santa Cruz City School District (Santa Cruz).

On June 18, 2013, the parties filed a joint Motion to Consolidate the First Case with the Second Case and to continue the due process hearing dates set in both cases. OAH granted the joint motion on June 19, 2013 and ordered the matters continued to September 16, 2013 at 10 a.m. for Pre hearing Conference (PHC) and September 23-26, 2013 for Due Process Hearing.

On Friday September 13, 2013 at 4:47 p.m. Student filed a Motion to File a Second Amended Complaint. The motion was heard at the PHC on Monday September 16, 2013 at 10:30 a.m. Santa Cruz and Live Oak did not stipulate to the motion and objected to further amending the complaint on grounds that respondents are entitled to a speedy resolution of the consolidated matters and would be prejudiced because a second amendment would require a further continuance causing a further delay of the hearing of the consolidated matters now scheduled for hearing next week. Accordingly, based upon the discussion below Student's motion is denied.

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).)¹ The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

The motion to amend is timely, however, the motion seeks to amend the complaint to address matters which arose and/or were discovered subsequent to the issues asserted in the first amended complaint. First, Student asserts that the motion to amend is timely and must be granted according to the statute. Second, Student asserts that he requested a copy of his records on April 2013 from Live Oak. The records were timely delivered to Student but were missing documents. Parents notified Live Oak of the missing documents on July 15, 2013 and Live Oak provided the missing data on August 22, 2013. Student also asserts the delay in bringing the motion was because Live Oak hid the assessment data which Student just discovered on or around August 22, 2013 which if known at the time of filing his complaint would have allowed Student to allege violation of parents' right to meaningful participation in the IEP process.

¹ All statutory citations are to Title 20 United States Code unless otherwise indicated.

The motion is denied because (1) Student has presented no evidence that Live Oak hid the data or information that he allegedly discovered for the first time on or around August 22, 2013, (2) Student has presented no evidence to explain the nearly one-month delay in filing the motion to amend after discovering the information, (3) Student may file a new due process complaint to address any claims arising on the newly discovered matters, and (4) the effect of the proposed amendment is to prejudice respondent/petitioner Live Oak and respondent Santa Cruz, as well as Student, by denying them a speedy resolution of the consolidated cases.

IT IS SO ORDERED.

Dated: September 16, 2013

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings